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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 SUMMIT ENTERTAINMENT, LLC, a
Delaware limited liability company,

15 Plaintiff,
16

17 v.

18 DAIANA SANTIA, an individual;
HECTOR SANTIA, an individual; and
19 JOHN DOES 1-10,
20 Defendants.
21
22
23
24

Case No.: CV11-06310 ODW (SSx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF SUMMIT
ENTERTAINMENT, LLC'S MOTION
FOR DEFAULT JUDGMENT**

Date: July 29, 2013

Time: 1:30 p.m.

Place: Hon. Otis D. Wright II

Courtroom 11

Spring Street Courthouse

312 N. Spring Street

Los Angeles, California 90012

25 Plaintiff SUMMIT ENTERTAINMENT, LLC ("Summit") hereby submits this
26 Memorandum of Points and Authorities in support of its Motion for Default Judgment
27 ("Motion") against Defendants DAIANA SANTIA and HECTOR SANTIA
28 (collectively "Defendants").

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 17, 2013, upon the request of Summit, the Clerk of Court entered defaults against Defendants in this copyright infringement and computer fraud action. Plaintiff now moves for entry of a default judgment against the Defendants seeking a permanent injunction, statutory damages and attorneys' fees and costs.

Summit filed its Complaint after discovering that Defendants had egregiously accessed, viewed and downloaded from Summit's secure computer servers and accounts Summit's film footage, audio and photographs from the feature films "The Twilight Saga: Breaking Dawn – Part 1" and "The Twilight Saga: Breaking Dawn – Part 2." After Defendants failed to respond to the Complaint, Summit sought and obtained a Clerk's default. Accordingly, under Federal Rule of Civil Procedure 55, the allegations of the Complaint are deemed true for purposes of this request for a default judgment, and Summit is entitled to the relief it seeks.

II. STATEMENT OF FACTS

A. Procedural Background

Summit filed its Complaint in this matter on August 1, 2011. (Declaration of David K. Caplan ("Caplan Decl.") ¶ 2) (Dkt. No. 1 ("Complaint").) Summit served Defendants with process on June 25, 2012, pursuant to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Convention"). (Caplan Decl. ¶ 3 Exs. A-B.) The Clerk entered Defendants' default on June 17, 2013. (Caplan Decl. ¶ 4, Ex. C.) To date, Defendants have not responded to Summit's Complaint or otherwise participated in this litigation. (Caplan Decl. ¶ 5.)

B. Summit's World Famous Twilight Franchise

Summit, a limited liability company with its principal place of business in Santa Monica, California, owns rights in and to the feature films "The Twilight Saga: Breaking Dawn – Part 1" and "The Twilight Saga: Breaking Dawn – Part 2"

1 including all images and elements contained therein (collectively, the “Twilight
2 Films”). The Twilight Films, including without limitation the images and audio
3 contained therein, are entitled to protection under federal copyright law. (Compl. ¶¶
4 3-4.) The Twilight Films are the final films in the “The Twilight Saga” series. The
5 first three films in this series were “Twilight,” “The Twilight Saga: New Moon,” and
6 “The Twilight Saga: Eclipse.” These three films have generated worldwide theatrical
7 box office receipts in excess of \$1.8 billion dollars (\$1,800,000,000). (Compl. ¶ 9.)

8 During the course of production of the Twilight Films, Summit created and
9 stored elements of the Twilight Films, including but not limited to film footage, audio
10 and photographs (the “Content”) on secure computer servers and accounts (the
11 “Servers”). (Compl. ¶ 10.) Summit owns all rights in the Content, including without
12 limitation, all relevant copyrights, and strictly limited access to the Content. Among
13 other things, Summit utilized various technological security measures to ensure that
14 only authorized individuals may access the Servers to view or download the Content.
15 During the production of the Twilight Films, Summit took steps to ensure that the
16 Content was kept strictly confidential and only released select images and video
17 content prior to the Twilight Films' release as part of its detailed marketing and
18 promotion plans. (Compl. ¶ 11.)

19 **C. Defendants’ Unauthorized and Unlawful Conduct**

20 In or about October of 2010, Defendants began attempting to access the Servers
21 surreptitiously and without authorization, and succeeded in gaining unauthorized
22 access to the Servers on multiple occasions in 2010 and 2011. (Compl. ¶ 12.)
23 Defendants accessed, viewed and downloaded Summit’s Content from the Servers
24 without authorization, and subsequently reproduced, altered, and distributed copies of
25 the Content (collectively the “Infringing Material”) through various means, including
26 without limitation by email, through social networking services such as Twitter and
27 Tumblr, and by posting the Infringing Material on various Internet websites. (Compl.
28 ¶ 13.)

Defendants' creation, reproduction and distribution of the Infringing Material has been without authorization and is without Summit's consent. Defendants have acted with willful and intentional disregard of Summit's rights, and Summit has sustained substantial and irreparable damage as a result thereof. In light of the fact that the Defendants have copied and stolen the Content prior to the release of the Films, their conduct has been particularly damaging to Summit. (Compl. ¶ 14.) Accordingly, Summit filed its Complaint against Defendants on August 1, 2011, asserting claims for: (1) Violation of the Computer Fraud and Abuse Act ("CFAA") (18 U.S.C. § 1030); (2) Violation of California Penal Code § 502; (3) Trespass to Chattels; and (4) Federal Copyright Infringement (17 U.S.C. §§ 501 *et seq.*).

III. LEGAL ARGUMENT

A. Jurisdiction

"When entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has the affirmative duty to look into its jurisdiction over the subject matter and the parties." *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F.Supp.2d 1039, 1051 (N.D. Cal. 2010).

1. The Court Has Subject Matter Jurisdiction

The Court has subject matter jurisdiction over this action. Under 28 U.S.C. Section 1331, district courts have original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States. As indicated above, Summit has asserted two claims arising under federal laws, including claims for copyright infringement and violation of the CFAA. Accordingly, the Court may properly exercise jurisdiction over this matter pursuant to Section 1331. Furthermore, because Summit's state law claims "are so related to [the] claims" within the Court's original jurisdiction, the Court may also properly exercise supplemental jurisdiction over Summit's state law claims pursuant to 28 U.S.C. Section 1367(a).

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2. Defendants are Subject to Personal Jurisdiction

Defendants are subject to personal jurisdiction in this Court. “Personal jurisdiction over an out-of-state defendant is appropriate if the relevant state’s long arm-statute permits the assertion of jurisdiction without violating federal due process.” *Craigslist, supra*, 694 F.Supp.2d at 1053. “Because California’s long arm statute is co-extensive with federal due process requirements, the jurisdictional analyses under California law and federal due process are the same.” *Ibid*. Accordingly, absent traditional bases for personal jurisdiction such as physical presence, domicile or consent, due process requires that nonresident defendants have certain “minimum contacts” with the forum state “such that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

The Ninth Circuit has established a three-prong test for analyzing whether a party has sufficient minimum contacts to be susceptible to specific personal jurisdiction: “(1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

Here, all three prongs are satisfied. First, Defendants knowingly accessed, viewed and downloaded Summit’s Content from the Servers without authorization, and subsequently reproduced, altered, and distributed copies of the Content (collectively the “Infringing Material”) through various means, including without limitation by email, through social networking services such as Twitter and Tumblr, and by posting the Infringing Material on various Internet websites. (Compl. ¶ 13.)

1 The various Servers accessed by the Defendants were located in California. (Caplan
2 Decl., ¶ 8). Furthermore, in addition to the location of the Servers, Summit is
3 headquartered in California, Defendants' actions were directly targeted at California,
4 and Defendants knew that Summit would suffer the brunt of its harm in California.
5 (See Compl. ¶ 3.)

6 With respect to the second prong of the minimum contacts test, a plaintiff's
7 claims must arise "out of the defendant's forum-related activities." *Panavision Int'l,*
8 *L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998). "In order to satisfy this
9 requirement, the plaintiff must show that 'but for' the defendant's forum-related
10 conduct, the injury would not have occurred." *Craigslist, supra*, 694 F.Supp.2d at
11 1053. Here, Defendants' willful copyright infringement and unlawful access to
12 Summit's Servers, located in California, were intentionally directed at Summit, a
13 company headquartered in California, and the harm caused by Defendants was felt in
14 California. Accordingly, Summit's claims arise out of the Defendants' forum-related
15 contacts because the harm to Summit would not have occurred but-for the Defendants'
16 actions.

17 "The third and final prong assesses the reasonableness of exercising jurisdiction
18 over the defendant." *Id.* at 1054. "For jurisdiction to be reasonable, it must comport
19 with 'fair play and substantial justice.'" *Ibid.* (quoting *Burger King Corp. v.*
20 *Rudzewicz*, 471 U.S. 462, 476 (1985)). Here, there is nothing in the record to suggest
21 that it would be inconvenient or otherwise unfair to require Defendants to defend this
22 action in this District. Thus, this factor supports the exercise of personal jurisdiction
23 over Defendants. Because all factors under the minimum contacts test favor the
24 exercise of personal jurisdiction, this Court may properly exercise personal
25 jurisdiction over Defendants.

26 **B. Standard for Default Judgments**

27 Under Federal Rule of Civil Procedure 55(b)(2), a party may apply to the court
28 for entry of a default judgment. "The district court's decision whether to enter a

1 default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th
 2 Cir. 1980). The Ninth Circuit has enumerated the following factors to consider in
 3 determining whether a default judgment is appropriate: (1) the possibility of prejudice
 4 to the plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of
 5 the complaint; (4) the sum of money at stake in the action; (5) the possibility of a
 6 dispute concerning material facts; (6) whether the default was due to excusable
 7 neglect; and (7) the policy favoring adjudication on the merits. *Eitel v. McCool*, 782
 8 F.2d 1470, 1471-72 (9th Cir. 1986).

9 “In applying this discretionary standard, default judgments are more often
 10 granted than denied.” *PepsiCo v. Tiunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Ca.
 11 1999). “When reviewing a motion for default judgment, the Court must accept the
 12 well-pleaded allegations of the complaint relating to liability as true.” *Amini*
 13 *Innovation Corp. v. KTY Intern. Marketing*, 768 F.Supp.3d 1049, 1053 (C.D. Cal.
 14 2011).

15 Further, under Local Rule 55-1, a motion for default judgment must be
 16 accompanied by a declaration: (1) identifying when and against what party default
 17 was entered; (2) identifying the pleading to which default was entered; (3) stating
 18 whether the defaulting party is an infant or incompetent person, and if so, whether that
 19 person is represented by a general guardian, committee, conservator or other
 20 representative; (4) stating that the Servicemembers Civil Relief Act does not apply;
 21 and (5) stating that notice has been served on the defaulting party, if required by
 22 Federal Rule of Civil Procedure 55(b)(2). Here, Summit was not required to serve
 23 Defendants with notice of this instant Motion because Defendants have not appeared
 24 in this action either personally or by a representative. Summit has complied with the
 25 remainder of the requirements under Local Rule 55-1. (Caplan Decl. ¶¶ 4 - 6.)
 26 Further, as set forth in detail below, the *Eitel* factors all favor granting default
 27 judgment in favor of Summit.

28 ///

1 1. Summit Will Be Prejudiced if Default Judgment Is Not Entered

2 Summit will be prejudiced if default judgment is not entered against
3 Defendants. As Defendants have not appeared in this action, a default judgment is
4 the only means available for compensating Summit for Defendants' unlawful conduct.
5 *See Amini Innovation Corp. v. KTY Intern. Marketing*, 768 F.Supp.2d 1049, 1054
6 (C.D. Cal. 2011). If the Court does not enter a default judgment in favor of Summit,
7 Defendants will be allowed to avoid liability by not responding to Summit's claims.

8 2. Summit's Claims Are Meritorious and Its Complaint Is Sufficient

9 Under the second and third *Eitel* factors, the Court must examine whether
10 Summit has pled facts sufficient to establish and succeed on its claims. As set forth
11 below, Summit has sufficiently alleged each of the claims in its Complaint, each of
12 which is meritorious.

13 *a. Copyright Infringement*

14 The Copyright Act grants the copyright owner the exclusive right to reproduce
15 a copyrighted work, to distribute copies of the work, and to authorize reproduction or
16 distribution. *See* 17 U.S.C. § 501. To establish copyright infringement, a plaintiff
17 must prove: (1) ownership of a valid copyright, and (2) that the defendant violated at
18 least one exclusive right granted to the plaintiff under 17 U.S.C. Section 106. *A&M*
19 *Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). Summit has met
20 this standard. As to the first element, the Complaint alleges that Summit owns
21 Federal Copyright Registration Nos. PAu3-521-211 and Pau3-521-218 for the
22 screenplays to the Twilight Films, and owns all the copyrights in all derivative works
23 based thereon, including without limitation the Content. (Compl. ¶ 39.) The
24 Complaint further alleges that Summit has registered numerous images and clips
25 related to the films, identified in Exhibit 1 to the Complaint. (Compl. ¶ 40, Ex. 1.) As
26 to the second element, Summit alleges that Defendants have created, reproduced and
27 distributed copies of elements of the Twilight Films through various means, including
28 email, through social networking services such as Twitter and Tumblr, and by posting

1 the Infringing Material on various Internet websites, without Summit's consent.
 2 (Compl. ¶¶ 14, 41.) These allegations are sufficient to establish a claim for copyright
 3 infringement under 17 U.S.C. Section 501.

4 *b. Violation of the CFAA*

5 To state a claim under the CFAA, Summit must show that Defendants
 6 "intentionally accessed a protected computer without, authorization and as a result of
 7 such conduct, caused damage or recklessly caused damage or loss." *Craigslist, supra*,
 8 694 F.Supp.2d at 1057. Summit has adequately pled a claim for violation of the
 9 CFAA. First, Summit has established that its Servers were involved in interstate and
 10 foreign commerce and communication, and are therefore protected under the CFAA.
 11 (Compl. ¶ 16). Second, Summit alleged that Defendants intentionally accessed the
 12 Servers without authorization and have, through interstate or foreign communication,
 13 obtained information from the Servers in violation of the CFAA. (Compl. ¶ 17).
 14 Summit further alleged that Defendants have, knowingly and with the intent to
 15 defraud, accessed the Servers without authorization, furthered the intended fraud, and
 16 obtained the valuable Content in violation of the CFAA. (Compl. ¶ 18). Finally,
 17 Summit alleged that Defendants' actions have caused loss to one or more persons,
 18 including without limitation Summit, in a one year period aggregating at least \$5,000
 19 in value. (Compl. ¶ 19). Accordingly, Summit has established its claim under the
 20 CFAA.

21 *c. Violation of California Penal Code § 502*

22 In its second cause of action, Summit alleges that Defendants violated
 23 California Penal Code Sections 502(c)(1), (2), (3), (6) and (7), which provide:

24 (c) Except as provided in subdivision (h), any person
 25 who commits any of the following acts is guilty of a
 26 public offense:

27 (1) Knowingly accesses and without permission alters,
 28 damages, deletes, destroys, or otherwise uses any data,
 computer, computer system, or computer network in
 order to either (A) devise or execute any scheme or

1 artifice to defraud, deceive, or extort, or (B) wrongfully
2 control or obtain money, property, or data.

3 (2) Knowingly accesses and without permission takes,
4 copies, or makes use of any data from a computer,
5 computer system, or computer network, or takes or
6 copies any supporting documentation, whether existing
7 or residing internal or external to a computer, computer
8 system, or computer network.

9 (3) Knowingly and without permission uses or causes to
10 be used computer services.

11 [...]

12 (6) Knowingly and without permission provides or assists
13 in providing a means of accessing a computer, computer
14 system, or computer network in violation of this section.

15 (7) Knowingly and without permission accesses or causes
16 to be accessed any computer, computer system, or
17 computer network.

18 Summit has sufficiently stated a claim under Section 502(c). With respect to
19 subsection (c)1, Summit alleged that Defendants knowingly accessed and without
20 permission made use of data from the Servers in order to wrongfully control or obtain
21 money, property, or data. (Compl. ¶ 23). Under subsection (c)(2), Summit alleged
22 that Defendants knowingly accessed and without permission took, copied or made use
23 of data from the Servers. (Compl. ¶ 24). With respect to subsection (c)(3), Summit
24 alleged that Defendants knowingly and without permission used Summit's computer
25 services. (Compl. ¶ 25). Under subsection (c)(6), Summit alleged that Defendants
26 knowingly and without permission provided or assisted in providing a means of
27 accessing the Servers. (Compl. ¶ 26). Finally, with respect to subsection (c)(7),
28 Summit alleged that Defendants knowingly and without permission accessed, or
29 caused to be accessed, the Servers. (Compl. ¶ 27). Taking all of the allegations in
30 Summit's Complaint as true, Summit has stated a claim for violation of Penal Code
31 Section 502(c).

1 *d. Trespass to Chattels*

2 “In order to prevail on a claim for trespass based on accessing a computer
3 system, the plaintiff must establish: (1) defendant intentionally and without
4 authorization interfered with plaintiff’s possessory interest in the computer system;
5 and (2) defendant’s unauthorized use proximately resulted in damage to plaintiff.”
6 *eBay, Inc. v. Bidder’s Edge, Inc.*, 100 F.Supp.2d 1058, 1069-1070 (N.D. Cal. 2000).
7 Here, Summit alleged that it has a possessory interest in the servers and Defendants
8 intentionally and without authorization interfered with Summit’s possessory interest in
9 the Servers by accessing the Servers and viewing and downloading Content from the
10 Servers without authorization. (Compl. ¶ 33). Summit further alleged that
11 Defendants’ conduct has and will continue to cause Summit irreparable harm for
12 which there is no adequate remedy at law, and is also causing damage to Summit.
13 (Compl. ¶ 34). Summit has therefore adequately alleged a claim for trespass to
14 chattels based on Defendants’ conduct.

15 3. The Sum of Money at Stake is Consistent with the Allegations of
16 Harm in Summit’s Complaint

17 “The fourth *Eitel* factor examines the amount of money at stake in relation to
18 the seriousness of a defendant’s conduct.” *Craigslist, supra*, 694 F.Supp.2d at 1060.
19 “This requires that the court assess whether the recovery sought is proportional to the
20 harm caused by the defendant’s conduct.” *Landstar Ranger, Inc. v. Parth Enterprises,*
21 *Inc.*, 725 F.Supp.2d 916, 921 (C.D. Cal. 2010). Summit seeks injunctive relief against
22 further infringement and wrongful conduct by Defendants and statutory damages of
23 \$2,100,000 (\$150,000 for infringement of each of the 14 copyrights) pursuant to 17
24 U.S.C. Section 504(c)(2). The amount of money sought by Summit is consistent with
25 the allegations of knowing and willful conduct by Defendants and the claims asserted.
26 *See Craigslist, supra*, 694 F.Supp.2d at 1060 (holding that this factor weighed in favor
27 of default judgment where plaintiff asserted copyright, trademark breach of contract,
28

1 and fraud claims and sought damages in the range of \$1,177,827.07 to \$4,900,327.07).
 2 Accordingly, this factor weighs in favor of granting default judgment.

3 4. There Is No Possibility of a Genuine Issue of Material Fact

4 “The fifth *Eitel* factor examines the likelihood of dispute between the parties
 5 regarding the material facts surrounding the case.” *Craigslist, supra*, 694 F.Supp.2d
 6 at 1060. As set forth above, Summit has established that no possibility of a genuine
 7 issue of material fact exists in this matter because Defendants’ default has established
 8 the allegations of material fact in Summit’s Complaint as true. “Thus, no dispute has
 9 been raised regarding the material averments of the complaint, and the likelihood that
 10 any genuine issue may exist is, at best, remote. This factor therefore favors the entry
 11 of default.” *Philip Morris U.S.A. Inc. v. Castworld Prods.*, 219 F.R.D. 494, 500 (C.D.
 12 Cal. 2003).

13 5. The Default Entered Against Defendants did Not Result from
 14 Excusable Neglect

15 “The sixth *Eitel* factor considers whether defendant’s default may have been the
 16 product of excusable neglect.” *Landstar, supra*, 725 F.Supp.2d at 922. That is not the
 17 case here. In the time since they were served with the summons and Complaint,
 18 Defendants have chosen not to participate in this litigation in any capacity. Under
 19 these circumstances, courts have rightfully concluded that “the possibility of
 20 excusable neglect is remote.” *Philip Morris, supra*, 219 F.R.D. at 501.

21 6. The Policy Favoring Adjudication of Disputes on the Merits does
 22 Not Weigh Against Default Judgment

23 “The final *Eitel* factor examines whether the strong policy favoring deciding
 24 cases on the merits prevents a court from entering default judgment.” *Craigslist,*
 25 *supra*, 694 F.Supp.2d at 1061. Although “[c]ases should be decided upon their merits
 26 whenever reasonably possible,” *Eitel, supra*, 782 F.2d at 1472, “Rule 55(a) allows a
 27 court to decide a case before the merits are heard if defendant fails to appear and
 28 defend.” *Landstar, supra*, 725 F.Supp.2d at 922. Where a defendant’s failure to

1 appear “makes a decision on the merits impracticable if not impossible,” entry of
 2 default judgment is warranted. *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172,
 3 1177 (C.D. Cal. 2002). As Defendants have failed to appear or respond in this matter,
 4 a decision on the merits is impossible. Accordingly this factor weighs in favor of a
 5 default judgment.

6 In sum, accepting all of the allegations in Summit’s Complaint as true, the
 7 factors articulated in *Eitel* militate in favor of granting a default judgment against
 8 Defendants and Summit’s instant Motion should be granted in its entirety.

9 **C. Summit is Entitled to Its Requested Relief**

10 1. Summit is Entitled to Injunctive Relief

11 Summit seeks injunctive relief to permanently enjoin Defendants from
 12 accessing Summit’s Servers without authorization and from using reproducing,
 13 distributing, selling or offering for sale, Summit’s Content, the Infringing Material, or
 14 any other Summit images or films. The injunction Summit requested in its Complaint,
 15 which is also included in the proposed Default Judgment submitted herewith, is both
 16 authorized by the relevant statutes and warranted under the facts of this case. As set
 17 forth in detail above, Summit has shown that it is entitled to judgment on each of its
 18 claims, including its claims for federal copyright infringement and violation of the
 19 CFAA. Both of these statutes authorize a Court to grant injunctive relief. *See* 17
 20 U.S.C. § 502 (authorizing a court to grant injunctions “as it may deem reasonable to
 21 prevent or restrain infringement of a copyright”); 18 U.S.C. § 30(g) (authorizing
 22 injunctive relief for violations of the CFAA).

23 A plaintiff is entitled to equitable injunctive relief when: (1) the plaintiff has
 24 suffered an irreparable injury; (2) remedies available at law, such as monetary
 25 damages, are inadequate to compensate for that injury; (3) considering the balance of
 26 hardships between the plaintiff and defendant, a remedy in equity is warranted; and
 27 (4) the public interest would not be disserved by a permanent injunction. *See eBay*
 28 *Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391(2006). When a defendant’s “refusal

1 to answer or appear . . . makes it difficult for plaintiff to prevent further infringement,”
 2 the “traditional equitable principles established by *eBay Inc. v. MercExchange*,
 3 *LLC*...are satisfied and injunctive relief is warranted.” *Herman Miller, Inc. v.*
 4 *Alphaville Design, Inc.*, CV:08-3437, 2009 U.S. Dist. LEXIS 103384, at *22 (N.D.
 5 Cal. October 22, 2009); *see also Philip Morris*, 219 F.R.D. at 502 (“[I]njunctive relief
 6 is appropriate because the claims otherwise warrant an injunction, and Defendant,
 7 though well aware of serious claims brought against it, has chosen to ignore this
 8 lawsuit. Failure to grant the injunction would needlessly expose the Plaintiff to the
 9 risk of continuing irreparable harm.”).

10 Moreover, courts have continued to award injunctions as a matter of course in
 11 copyright infringement cases even after the *eBay* decision. *See Warner Bros. Entm’t.*
 12 *Inc. v. Paul Duhy*, CV:09-5798, 2009 U.S. Dist. LEXIS 123332, at *9 (C.D. Cal. Nov.
 13 30, 2009) (“a showing of copyright infringement liability and the threat of future
 14 violations is sufficient to warrant a permanent injunction.”); *Autodesk, Inc. v. Flores*,
 15 CV:10-11687, 2011 U.S. Dist. LEXIS 11687, at *18-19 (N.D. Cal. January 31, 2011)
 16 (copyright infringement is “presumed to give rise to irreparable harm for which there
 17 is no adequate remedy at law.”). Here, Summit’s injunction is narrowly tailored to the
 18 specific harms shown in Summit’s Complaint. Summit is therefore entitled to a
 19 permanent injunction against Defendants in the form included in the Proposed Default
 20 Judgment submitted herewith.

21 2. Summit is Entitled to Statutory Damages

22 Under the Copyright Act, a plaintiff “may elect, at any time before final
 23 judgment is rendered, to recover, instead of actual damages and profits, an award of
 24 statutory damages for all infringements involved in the action, with respect to any one
 25 work . . . in a sum of not less than \$750 or more than \$30,000 as the court considers
 26 just.” 17 U.S.C. § 504(c)(1). In cases of willful infringement, a court has discretion
 27 to award statutory damages of up to \$150,000 for each infringed work. 17 U.S.C. §
 28 504(c)(2). Here, Defendants’ default has established that their infringement of

Summit's copyrights was willful. As alleged in Summit's Complaint, Defendants have infringed a total of fourteen of Summit's registered copyrights. (Compl. ¶¶ 39-40, Ex. 1).¹ Accordingly, Summit seeks a total of \$2,100,000 for Defendants' willful infringement of said copyrights.

Summit has elected, pursuant to 17 U.S.C. § 504(c), to recover an award of statutory damages for Defendants' infringement of its copyrights. Given the willfulness of Defendants' infringement as evidenced by the undisputed allegations in Summit's Complaint, Summit respectfully requests that the Court award Summit statutory damages against Defendants in the maximum permissible amount of \$2,100,000.

3. Summit is Entitled to Attorneys' Fees

Finally, Summit is entitled to an award of attorneys' fees and costs in pursuit of this action. Attorneys' fees and costs are recoverable under both 17 U.S.C. Section 504(a) and California Penal Code Section 502(e). Attorneys' fees under the Copyright Act may be freely awarded to the prevailing party as long as it "seeks to promote the Copyright Act's objectives." *Historical Research v. Cabral*, 80 F.3d 377, 378-79 (9th Cir. 1996), *citing Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 533-34, 114 S. Ct. 1023, 127 L. Ed. 2d. 455 (1994)). In this case, an award of attorneys' fees is appropriate to vindicate Summit for the infringement of its copyrights. Defendants' deliberate and willful infringement of Summit's copyrighted works has forced Summit to incur attorneys' fees and related costs to protect its rights. Pursuant to

¹ Exhibit 1 to Summit's Complaint identified four copyrights that, at the time the Complaint was filed, were either pre-registered or for which registration had been applied. Those four copyrights have since proceeded to registration, with registration numbers as follows: (1) PAu003576942 (TSBD Unpublished Clip No. 1); (2) PAu003577237 (TSBD Unpublished GIF No. 1); (3) V3612D811 (The Twilight Saga: Breaking Dawn – Part 1); (4) V3611D081 (The Twilight Saga: Breaking Dawn – Part 2). (Caplan Decl. ¶ 7).

1 Local Rule 55-3, Summit seeks a total of \$47,600 in attorneys' fees (representing
2 \$5,600 plus two percent of \$2,100,000).

3 4. Summit is Entitled to Post Judgment Interest

4 Finally, Summit also seeks post-judgment interest on the aggregate sum of
5 statutory damages and attorneys' fees awarded. Pursuant to 28 U.S.C. Section
6 1961(a), interest "shall be allowed on any money judgment in a civil case recovered in
7 a district court." Accordingly Summit should be awarded post-judgment interest
8 calculated "at a rate equal to the weekly average 1-year constant maturity Treasury
9 yield, as published by the Board of Governors of the Federal Reserve System, for the
10 calendar week preceding the date of the judgment." *Id.*

11 **IV. CONCLUSION**

12 For the foregoing reasons, Summit respectfully requests that the Court enter the
13 Proposed Default Judgment against Defendants submitted herewith.

14
15 Respectfully submitted,

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17 Dated: July 1, 2013

18 By: /s/ David K. Caplan
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20 Keats McFarland & Wilson LLP
21 Attorney for Plaintiff
22 Summit Entertainment, LLC
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